

Message Text

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12

ACTION L-03

INFO OCT-01 EUR-25 EA-11 IO-15 ISO-00 AF-10 ARA-16 NEA-10

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FM USMISSION USUN NY

TO SECSTATE WASHDC 9802

INFO AMEMBASSY BRUSSELS

AMEMBASSY HELSINKI

AMEMBASSY CANBERRA

AMEMBASSY OSLO

AMEMBASSY STOCKHOLM

AMEMBASSY OTTAWA

AMEMBASSY PARIS

AMEMBASSY COPENHAGEN

AMEMBASSY ROME

AMEMBASSY THE HAGUE

AMEMBASSY TOKYO

AMEMBASSY LONDON

AMEMBASSY BONN

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LIMITED OFFICIAL USE SECTION 1 OF 2 USUN 3578

E.O. 11652: N/A

TAGS: UNGA, PINS, CGEN

SUBJ: UNGA--LEGAL COMMITTEE--CONVENTION ON
PROTECTION OF DIPLOMATS (CPD)

SUMMARY: VAN BRUSSELEN (BELGIUM) GROUP MET EVENING
OCT 1 INFORMALLY AT CANADIAN MISSION TO DISCUSS TACTICAL
AND SUBSTANTIVE ASPECTS OF ILC DRAFT ARTICLES ON PROTEC-
TION OF DIPLOMATS. PRESENT WERE FINLAND, AUSTRALIA,
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NORWAY, SWEDEN, CANADA, FRANCE, DENMARK, ITALY,
NETHERLANDS, JAPAN, UK, US, BELGIUM AND GERMANY, OF
WHICH FINLAND AND NORWAY WERE NEW PARTICIPANTS.
CHAIRMAN VAN VRUSSELEN SUGGESTED SPAIN'S PARTICIPATION

AT SUBSEQUENT MEETINGS AND GROUP DECIDED TO INVITE ALL WEO GROUP MEMBERS AS WELL, I.E. ADDING TURKEY, GREECE AND ICELAND. GERMAN AND JAPANESE REPS ANNOUNCED IMPROVED POSITIONS ON ARTICLE 1, AND SWEDES CIRCULATED A WORKING PAPER ON THE ARTICLE. GROUP AGREED TO CONVENE NEXT MEETING EVENING OCT 2 AT CANDIAN MISSION.

1. VAN BRUSSELEN STATED REASON FOR MEETING WAS TO CONTINUE WORK OF PREVIOUS GROUP MEETINGS (USUN 2539, 2570, 2806, 2825-8, 2831, 3079) AND OF COUNCIL OF EUROPE MEETING (USUN 3318).

2. GERMAN REP DELINEATED FOLLOWING CHANGES IN POSITION ON ARTICLE 1: (A) TERM "INTERNATIONALLY PROTECTED PERSON" PREFERRED TO OTHER PROPOSALS WHICH ARE TOO LONG, TOO COMPLICATED OR NOT SPECIFIC ENOUGH; (B) MEMBERS OF FAMILY SHOULD BE INCLUDED IN PROTECTED CATEGORY SET FORTH IN ARTICLE 1(A) AND (B); (C) FAVORED FURTHER CLARIFICATION OF GROUPS OF PERSONS PROTECTED, BUT THOUGHT SCOPE OF COVERAGE SHOULD NOT DEPEND ON NATIONAL LEGISLATION; (D) FAVORED JAPANESE PROPOSAL TO LIMIT CRIMES TO MORE SERIOUS OFFENSES (I.E. MURDER OR SEVERE BODILY INJURY) AND, IF THIS ACCEPTED, WOULD ABANDON PROPOSAL TO REQUIRE "MOTIVE" AS ELEMENT OF CRIME. HOWEVER, IF PRESENT WORDING KEPT, WHICH INCLUDED LESSER OFFENSES, THEN GERMANS DESIRED CLAUSE AT END OF ARTICLE 1(1)(B) BRINGING IN MOTIVE, E.G. EXCLUDING OFFENSES MOTIVATED IN SUCH A WAY THAT THERE OBVIOUSLY NO CONNECTION WITH STATUS OF PROTECTED PERSON. THUS, CRIMES HAVING NOTHING TO DO WITH THE STATUS OF THE PERSON WOULD BE EXCLUDED.

3. JAPANESE REP, RECALLING PRIOR RESERVATION VOICED RELATING TO UNIVERSAL JURISDICTION AS PROVIDED IN ARTICLE 2(3), ANNOUNCED THAT GOJ WILLING TO ACCEPT HAGUE AND MONTREAL CONVENTION FORMULATION ON THIS POINT. HE ALSO FAVORED MORE SPECIFIC DEFINITION IN ARTICLE 1(B) AND LIMITING "THREAT TO ATTACK" IN ARTICLE 2(1)(C) TO LIMITED OFFICIAL USE
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THREAT AGAINST "INTERNATIONALLY PROTECTED PERSON" HIMSELF. UNDER NEW INSTRUCTIONS, JAPAN NO LONGER PURSUING INCLUSION OF "MOTIVE" ELEMENT IN ARTICLE 2, BUT STILL BELIEVES THAT COMMON CRIMES SHOULD NOT BE COVERED UNDER CONVENTION AND SEEMED TO AGREE THIS COULD BE ACCOMPLISHED BY REQUIRING THAT ALLEGED OFFENDER HAVE KNOWLEDGE OF OFFICIAL STATUS OF VICTIM. NO FORMULATION OFFERED BUT LIKE GERMANS, CONCERNED ABOUT NOT INCLUDING ALL COMMON CRIMES.

4. AFTER BRIEF DISCUSSION ON TACTICS, VAN BRUSSELEN SUMMARIZED SENTIMENTS IN THE GROUP:
(A) ALL AGREED ON 15-MEMBER DRAFTING GROUP IF POSSIBLE.

(B) BUT FOLLOWING FALL-BACK POSITIONS SHOULD BE KEPT IN MIND: ACCEPT A 25-MEMBER DRAFTING GROUP OR, IN ALTERNATIVE, AN OPEN-ENDED GROUP IF THAT ONLY WAY OBTAIN AGREEMENT TWO DC.

5. CANADA AND US AGREED THAT GONZALEZ-GALVEZ, YASSEEN, SAHOVIC, JACOVIDES WOULD BE ACCEPTABLE CHAIRMAN OF DRAFTING GROUP. VAN BRUSSELEN CONCLUDED CHAIRMANSHIP OF DRAFTING GROUP CAN AGAIN BE TAKEN UP AT WEO MEETING OCTOBER 2. (FURTHER DEVELOPMENTS AT WEO MEETINGS OCT 2 REPORTED IN SEPTEL.)

6. NEXT TOPIC CONSIDERED WAS TACTICS OF GROUP IN 6TH COMITE: WHICH AMENDMENTS TO SUBMIT AND BY WHOM, AND WHAT TO SAY IN STATEMENTS. US REP URGED ADOPTING LEAST NUMBER OF AMENDMENTS AND ADOPTION COMMON WEO POSITIONS WHEREEVER POSSIBLE. HE SUGGESTED ONE WEO DEL BE CHARGED WITH GETTING COSPONSORS FROM OTHER REGIONAL GROUPS WITH REGARD TO EACH OF MAIN AMENDMENTS GROUP AGREED ON. VANBRUSSELEN AND GROUP AGREED THAT TO EXTENT POSSIBLE, AGREEMENT SHOULD BE SOUGHT ON AN AMENDMENT, VOLUNTEER FOUND TO DO THE RUNNING AND REPRESENTATIVE COSPONSORS TO INTRODUCE PROPOSALS. HOWEVER, ALL AGREED BEST NOT TO INTRODUCE A WEO AMENDMENT. AS TO DISCUSSION OF GENERAL VIEWS WITH OTHER GROUPS, CANADIANS FAVORED SOUNDING OUT IN GENERAL TERMS OTHER REGIONAL GROUPS TO TEST RECEPTIVITY TO TEXT. US EMPHAZED IMPORTANCE OF BEGINNING CONTACT OUTSIDE THE GROUP.

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7. IT WAS AGREED THAT UK (STEELE) WOULD PROPOSE TO WEO GROUP MORNING OF OCT 2 THAT WEO GROUP ENDORSE SECRETARIAT PAPER (Z/C.6/L.898) ON METHODS OF WORK FOLLOWED BY 6TH COMITE AS PROCEDURE TO BE FOLLOWED IN DEALING WITH PROTECTION OF DIPLOMATS ITEM.

8. SWEDEN CIRCULATED 8 PAGE WORKING PAPER ON ARTICLE 1 WHICH CONCERNED ITSELF WITH THE AMBIGUITY OF THE SCOPE OF PERSONS ENTITLED TO INTERNATIONAL PROTECTION UNDER PARAGRAPH 1(B). FINLAND ASSOCIATED ITSELF WITH DOCUMENT, AS TO ARTICLE 2, RATHER THAN USING ILC DRAFT, FINLAND FAVORED ENUMERATION: "MURDER, HOMICIDE, OR OTHER GRAVE ATTACKS AGAINST THE PERSON OR LIBERTY."

9. CONCLUDING TWO PARAGRAPHS OF SWEDISH PAPER AS FOLLOWS:

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SUBJ: UNGA--LEGAL COMMITTEE--CONVENTION ON
PROTECTION OF DIPLOMATS (CPD)

9. IF ONE WISHES TO GIVE THE CONVENTION A NARROW SCOPE,
ONE COULD TIE THE DEFINITION TO THE RIGHT TO INVIOABILITY
(IN THE FULL SENSE OF THE WORD) AND TO THE EXPRESSLY STATED
CATEGORIES OF PERSONS WHO ARE ENTITLED TO SPECIAL PROTECTION
BY A RECEIVING STATE OR HOST STATE AGAINST ATTACKS BY
PRIVATE PERSONS. IN THAT CASE ARTICLE ONE SHOULD RUN AS
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FOLLOWS:

ARTICLE 1

FOR THE PURPOSE OF THE PRESENT ARTICLES (CONVENTION):

1. 'INTERNATIONALLY PROTECTED PERSON' (OR: 'PERSON PRO-
TECTED BY INTERNATIONAL LAW') MEANS:

(A) (NO CHANGE)

(B) ANY REPRESENTATIVE OR OFFICIAL (ALT. ANY PERSON ACTING ON BEHALF) OF EITHER A STATE OR AN INTERNATIONAL ORGANIZATION WHO AT THE TIME WHEN AND AT THE PLACE WHERE ANY OF THE OFFENCES (CRIMES) MENTIONED IN ARTICLE 2 IS COMMITTED AGAINST HIM IS ENTITLED, PURSUANT TO GENERAL (ALT. CUSTOMARY) INT'L LAW OR AN INT'L AGREEMENT OF A WORLD-WIDE OR REGIONAL CHARACTER, TO SPECIAL PROTECTION AGAINST ATTACKS UPON HIS PERSON, LIBERTY (ALT. FREEDOM) OR DIGNITY FOR OR BECAUSE OF THE PERFORMANCE OF FUNCTIONS ON BEHALF OF HIS STATE OR INT'L ORGANIZATION, AS WELL AS MEMBERS OF HIS FAMILY WHO ARE ENTITLED TO SIMILAR SPECIAL PROTECTION BY VIRTUE OF THE SAME LEGAL RULES;

BEGIN BRACKETS ADD END BRACKETS (C) ANY PERSON ACTING ON BEHALF OF EITHER A STATE OR AN INT'L ORGANIZATION WHO AT THE TIME AND AT THE PLACE ANY OF THE OFFENCES (CRIMES) MENTIONED IN ARTICLE 2 IS COMMITTED AGAINST HIM IS ENTITLED, PURSUANT TO AN AGREEMENT BETWEEN A HOST STATE AND AN INT'L ORGANIZATION, TO THE SAME PRIVILEGES AND IMMUNITIES AS ARE ENJOYED BY DIPLOMATIC AGENTS, AS WELL AS MEMBERS OF HIS FAMILY WHO ARE ENTITLED TO THE SAME PRIVILEGES AND IMMUNITIES BY VIRTUE OF THE PROVISIONS OF THOSE AGREEMENTS.

"10. IF, ON THE OTHER HAND, THE CONVENTION IS TO COVER A WIDE RANGE OF OFFICIALS, IT SEEMS THAT AN ENUMERATION OF THE CATEGORIES TO BE COVERED WOULD BE A MEANS TO ACHIEVE THE CLEAR AND PRECISE TEXT OF ARTICLE 1 WHICH MANY GOVERNMENTS IN THEIR OBSERVATIONS HAVE FOUND DESIRABLE. A POSSIBLE CONSEQUENCE, IN THIS CASE, WILL BE THAT THE CONVENTION WILL HAVE TO APPLY ALSO TO PERSONS WHO DO NOT ENJOY ANY INVIOABILITY OR OTHER KIND OR PROTECTION BY VIRTUE OF RULES OF CUSTOMARY INT'L LAW OR OF INTERNATIONAL AGREEMENTS OTHER THAN THE CONVENTION NOW BEING DRAFTED. EXAMPLES: MEMBERS OF THE FAMILY OF A CAREER OR HONORARY CONSULAR OFFICER AND MEMBERS OF THE FAMILY LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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OF OFFICIALS OR EXPERTS OF AN INT'L ORGANIZATION. FOLLOWING THIS LINE OF THOUGH ARTICLE 1 PARA. COULD BE WORDED AS FOLLOWS:

ARTICLE 1

FOR THE PURPOSE OF THE PRESENT ARTICLES (CONVENTION):

1. 'INTERNATIONALLY PROTECTED PERSON' (ALT. 'PERSON PROTECTED BY INT'L LAW') MEANS:

A) NO CHANGE

B) ANY REPRESENTATIVE OR OFFICIAL (ALT. ANY PERSON ACTING ON BEHALF OF) EITHER A STATE OR AN INT'L ORGANIZATION, WHO UNDER CONVENTIONS CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS OR OF A REGIONAL INTERNATIONAL ORGANIZATION IS ENTITLED TO INVIOABILITY OR WHO IS ENTITLED TO SPECIAL PROTECTION AGAINST ATTACKS ON HIS PERSON, LIBERTY (ALT. FREEDOM) OR DIGNITY AS WELL AS MEMBERS OF THE

LATTER PERSON'S FAMILY FORMING PART OF HIS HOUSEHOLD; WHO UNDER CONVENTIONS CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS OR OF A REGIONAL INTERNATIONAL ORGANIZATION IS ENTITLED TO IMMUNITY FROM LEGAL PROCESS IN RESPECT OF WORDS SPOKEN OR WRITTEN OR ALL ACTS PERFORMED BY HIM IN HIS OFFICIAL CAPACITY OR, IN THE CASE OF AN EXPERT, IN THE COURSE OF THE PERFORMANCE OF HIS MISSION AS WELL AS MEMBERS OF THE FAMILY OF SUCH PERSON FORMING PART OF HIS HOUSEHOLD OR, IN THE CASE OF EXPERTS, ACCOMPANYING HIM ON HIS MISSION AND WHO IS BEING ACCORDED BY AGREEMENT BETWEEN A UNIVERSAL OR REGIONAL INTERNATIONAL ORGANIZATION AND THE HOST STATE INVIOABILITY OR PROTECTION AGAINST ATTACKS ON HIS PERSON, LIBERTY (ALT. FREEDOM) OR DIGNITY, OR IS ENTITLED TO IMMUNITY FROM LEGAL PROCESS IN RESPECT OF WORDS SPOKEN OR WRITTEN OR ALL ACTS PERFORMED BY HIM IN HIS OFFICIAL CAPACITY, AS WELL AS MEMBERS OF HIS FAMILY FORMING PART OF HIS HOUSEHOLD, PROVIDED THAT THE REPRESENTATIVE OR OFFICIAL AT THE TIME WHEN AND THE PLACE WHERE ANY OF THE OFFENCES (CRIMES) IS COMMITTED AGAINST HIM WAS PERFORMING FUNCTIONS ON BEHALF OF HIS STATE OR INTERNATIONAL ORGANIZATION OR PROCEEDING TO TAKE UP OR TO RESUME HIS FUNCTIONS OR IS RETURNING TO HIS OWN COUNTRY, OR IN THE CASE OF A MEMBER OF HIS FAMILY FORMING PART OF HIS HOUSEHOLD WHEN HE IS ACCOMPANYING THE HEAD OF THE FAMILY OR TRAVELLING LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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SEPARATELY TO JOIN HIM OR THE RETURN TO HIS COUNTRY."

10. SWEDISH DRAFT POINTS TO TWO POSSIBILITIES OF EITHER STRIVING FOR A CONVENTION WITH BROAD SCOPE OR ONE WITH A NARROW SCOPE. UK'S REACTION TO SWEDISH PROPOSAL WAS TO PREFER THE MORE LIMITED APPROACH. ALSO NOTED BY BRITISH REP WAS THE UNLIKELIHOOD OF ATTACKS UPON OFFICIALS OF INTERNATIONAL ORGANIZATIONS. US STATED OPINION THAT DRAFT SHOULD BE AS WIDE AS POSSIBLE AND THAT ILC DRAFT ATTEMPTS TO GIVE BROAD SCOPE OF PROTECTION. US WARNED AGAINST THE PRODUCTION OF A COMPLEX DRAFT LIKE THE SWEDISH PROPOSAL. FRG, JAPAN, BELGIUM PRESSED STRONGLY FOR NARROWER APPROACH. NORWAY ALSO SUPPORTED NARROWER APPROACH. CANADA COMMENTED THAT AMBIGUOUS CONVENTION NOT PER SE UNDESIRABLE SINCE PROBABLY GIVEN WIDER COVERAGE AND WOULD CREATE LESS PROBLEMS IN TERMS OF SUBSEQUENT NATIONAL LEGISLATION AND APPLICATION. UK REITERATED THE TIME AND PLACE CLARIFICATION FIRST VOICED AT AUG 6 MEETING. US SUMMARIZED POSITION THUS: ILC TEXT SHOULD BE FOLLOWED AS MUCH AS POSSIBLE, LIMITING CHANGES AS MUCH AS POSSIBLE, AND LANGUAGE SHOULD BE KEPT AS SIMPLE AS POSSIBLE.

11. AGREEMENT SEEMED TO EMERGE THAT AN ACCEPTABLE PARA
1(B) COULD BE DRAFTED IF IT CONTAINED THE UK TIME/PLACE
PROPOSAL AS WELL AS LANGUAGE FROM VIENNA DIPLOMATIC AND
CONSULAR CONVENTIONS CLARIFYING NATURE OF "SPECIAL PRO-
TECTION". IN COURSE DISCUSSION PROPOSAL ROUGHLY ALONG
LINES OF ALTERNATE IN US POSITION PAPER SURFACED. VAN
BRUSSELEN STRONGLY SUPPORTED APPROACH AND ASKED FOR
VOLUNTEERS TO REFINE DRAFTING. SWEDEN AND US AGREED TO MEET
AND ATTEMPT PRODUCE REDRAFT OF ART
1(1)(B). NETHERLANDS SUGGESTED THA

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To: STATE INFO BRUSSELS
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